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CPL (Linwood) LLC d/b/a Linwood Care Center, and its successor, 201 New Road Operations, LLC d/b/a Linwood Care Center¹ and Sandra L. Transue, Petitioner and 1199 SEIU United Healthcare Workers East Union. Case 04-RD-157892

February 3, 2017

DECISION ON REVIEW AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS
PEARCE AND MCFERRAN

On February 10, 2016, the National Labor Relations Board issued an Order denying CPL (Linwood) LLC d/b/a Linwood Care Center's ("the Employer") request for review of the Regional Director's decision to hold the instant petition in abeyance. The Employer and its successor (hereinafter "the Employers") subsequently filed a motion with the Region requesting a *Saint Gobain*² hearing. On July 28, 2016, the Acting Regional Director issued an Order denying the Employers' motion. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employers filed a timely request for review, arguing that a *Saint Gobain* hearing should be held and that the Regional Director's alleged bias affected the processing of the petition. The Employers' request for review is granted as it raises substantial issues warranting review. After careful consideration, we affirm the Acting Regional Director and find that it is appropriate to continue holding the petition in abeyance.

A regional director may be required to hold a *Saint Gobain* hearing when dismissing a petition based on charges that raise an issue of a causal relationship between the unfair labor practices and an incumbent union's subsequent loss of majority support. See *Saint Gobain*, 342 NLRB at 434; Casehandling Manual Part Two (CHM), Section 11730.3(c). The instant petition is being held in abeyance, and thus, a *Saint Gobain* hearing is not required as a matter of law.

We find that it is appropriate to continue holding the decertification petition in abeyance. On April 5, 2016, Administrative Law Judge Arthur J. Amchan issued his decision in the related consolidated unfair labor practice

case (04-CA-146362 et al.). On November 30, 2016, the Board issued a decision adopting, in the absence of exceptions, the judge's findings that the Respondent violated Section 8(a)(1) of the Act when its agents Jon Burress and Dan Bryan solicited employees Mary Jo Halpin, Cassandra Morton, and Henry Waugh to sign a decertification petition; solicited employee grievances and promised to remedy them if employees abandoned their support for the Union; told employees that no changes in working conditions would be made unless either employees got rid of the Union or a collective-bargaining agreement was signed; interrogated employees concerning their support for the Union; and threatened employees by suggesting that it was futile to continue supporting the Union because contract negotiations could go on a very long time. *CPL (Linwood) LLC d/b/a Linwood Care Center and its successor 201 New Road Operations, LLC d/b/a Linwood Care Center*, 364 NLRB No. 154, slip op. at 1 fn. 1 (2016).³ These unfair labor practices are sufficient to warrant holding the petition in abeyance pursuant to the Board's blocking charge policy. See CHM Section 11730 ("The Agency has a general policy of holding in abeyance the processing of a petition where a concurrent unfair labor practice charge is filed by a party to the petition and the charge alleges conduct that, if proven, would interfere with employee free choice in an election, were one to be conducted.")⁴

We find it unnecessary to address the Employers' arguments regarding the alleged bias of the Regional Director in his initial determination to hold the petition in abeyance. Subsequent to the Regional Director's determination, the Acting Regional Director considered the Employers' request to hold a *Saint Gobain* hearing and he determined that a hearing was unnecessary and processing of the petition would continue to be held in abeyance. Further, for the reasons stated above, we find that there is no merit to the Employers' contentions that a *Saint Gobain* hearing should be held and the petition processed.

³ The Board severed and retained for further consideration the remaining allegations which have been excepted to either by the General Counsel or the Respondent. *Id.*

⁴ Acting Chairman Miscimarra favors a reconsideration of the Board's blocking charge doctrine for reasons expressed in the dissenting views that were contained within the Board's representation election rule, 79 Fed. Reg. 74308, at 74430-74460 (Dec. 15, 2014) (dissenting views of Member Miscimarra and Member Johnson), but he acknowledges that the Board has declined to materially change its blocking charge doctrine. Accordingly, he concurs in holding the petition in abeyance.

¹ We have added the successor 201 New Road Operations, LLC, d/b/a Linwood Care Center as an employer pursuant to the Employer's and the successor's answer to the Board's July 28, 2016 notice to show cause in Case 04-RM-145463.

² *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004).

ORDER

This proceeding is remanded to the Regional Director for further appropriate action consistent with this Decision on Review and Order.

Dated, Washington, D.C. February 3, 2017

Philip A. Miscimarra, Acting Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD